

No. 9(1)81-8Lab./2128—3154.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s H.S.E.B., Thermal Power House, Plot No. 1, Faridabad.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR
COURT, HARYANA, ROHTAK.

Reference No. 24 of 77

between

SHRI DAMODAR SHARMA, WORKMAN
AND THE MANAGEMENT OF M/S
H.S.E.B., THERMAL POWER HOUSE
PLOT NO. 1, FARIDABAD.

Present:—

Shri Narinder Pal Singh, for the
management.

Shri Bhim Singh Yadav, for the
workman.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/FD/226-77/22000, dated 4th June, 1977, under section 10(i) (c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Damodar Sharma, workman and the management of M/s H.S.E.B. The term of the reference was:—

Whether the termination of services of Shri Damodar Sharma was justified and in order? If not to what relief is he entitled?

On receipt of the order of reference notice as usual were sent to the parties. The workman appeared through his authorised representative in response to the notice sent to him on 5th July, 1977 but no one appeared on behalf of the management. The workman wanted to get the order of reference amended and

the case was adjourned to 11th August, 1977, for the same. The necessary amendment was effected,—*vide* the Government notification No. ID/FD/226-77/51359-62, dated 16th December, 1977. The workman filed his claim statement on 12th January, 1978. The management was proceeded against *ex parte* on 7th March, 1978, when no one appeared on their behalf. The management was again sent a fresh notice on 29th May, 1978, for 15th July, 1978. The management filed the written statement and issues were framed on 20th September, 1978, on the basis of the pleadings of the parties. The management was asked to lead their evidence first. On 9th February, 1979 the workman representative stated that the workman had been reinstated with continuity of service but the management did not pay back wages. The workman wanted to contest the reference on the issues of back wages only. The only issue remains to be decided was framed as under:—

Whether the workman is entitled to full back wages and continuity of service?

The evidence of the workman was recorded and closed on 15th May, 1979. The evidence of the management was recorded partly on 23rd August, 1979 and the remaining was recorded and closed on 26th December, 1979. Arguments were heard and after going through the evidence on record I decide the issues as under:—

The workman has stated in his claim statement that the management refuse to take him on duty on 10th February, 1976 without any rhyme and reason. He was working with the respondent with effect from 1st February, 1973. No charge-sheet was given to him. The workman presented himself on duty but he was not allowed to resume. He sent a registered letter on 13th February, 1976, which was received back and on 24th February, 1976 he sent his demand notice to the Conciliation Officer which resulted in this order of reference and the management did not participate in the conciliation proceedings. The management in their

written statement alleged that the workman did not report for duty and absented himself with effect from 8th February, 1976 onwards and it was denied that the management ever refused duty to him. The management never terminated his services and he remained wilfully absent from the date 8th February, 1976 onwards and the action for the wilful absence of the petitioner was yet to be taken against him.

The management has examined four witnesses in support of their contention and have relied upon Ex. M-1 which is the attested copy of the attendance sheet No. 228 for the month of February, 1976. From the evidence produced by the management I am not convinced as to the truth of the management contention and the same seem to be an afterthought and a concocted story which is obvious from the statement of the witnesses produced by the management. On the other hand the workman has been able to prove that he has been consistently writing to the management to allow him to resume duty which he was refused by the management. The management has not even tried to justify their action in as much as to place on file any intimation to the workman asking him to attend his duty when as alleged by them he did not report for duty. The management ought to have given him the opportunity and would have satisfied themselves as to his intention to continue his work with the respondent. The management has not even care to explain their position before Conciliation Officer. As per the statement of the workman sent has given charge-sheet to the workman after 7th December, 1978, the date of his reinstatement. This section of the management shows that they are doing it at this stage which they could have done when the workman began to absent himself if the management had any bonafide intention. This is being done with an ulterior motive.

In view of my findings above I am of the consideration opinion that the management did not allow the workman to resume his duties after 10th February, 1976 and as such he is entitled to full

back wages and continuity of service from 10th February, 1976 to 7th December, 1978 the date of his reinstatement. The reference is answered and returned in the above terms.

Dated the 21st February, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 362, dated 23rd February, 1981.

Forwarded, (four copies), to the Secretary, to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Dispute Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

The 20th February, 1981

No. 9(1)81-8Lab./1461.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Hema Embroidery Mills, 1416, Mathura Road, Faridabad.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR
COURT, HARYANA, ROHTAK.

Reference No. 104 of 77

between

SHRI KISHAN CHAND, WORKMAN
AND THE MANAGEMENT OF M/S
THE PANIPAT COOP. SUGAR MILLS,
PANIPAT.

Present:—

Shri Gian Chand, for the workman.

Shri R. S. Malik, for the management.

AWARD

This reference No. 104 of 77 has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/109-U-77/39426, dated 9th September, 1977 under section 10(1)(c) of the Industrial Dispute Act for adjudication of dispute existing between Shri Kishan Chand, workman and the management of M/s The Panipat Coop. Sugar Mill, Panipat. The term of the reference was:—

Whether the termination of Shri Kishan Chand was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties who appeared in response to the same on 31st October, 1977 and the case was adjourned to 8th December, 1977 for filing of the written statement. The workman representatives objection on the appearance of Shri R. S. Malik an advocate who was representing the management was over ruled and decided in favour of the management after recording of the statement of Shri R. S. Malik and after hearing the arguments on both sides by my learned predecessor on 7th February, 1978 inform the night. The management filed the written statement and the workman filed the rejoinder on 10th March, 1978. The only issue as per dispute referred to the court by the appropriate government arose on the pleadings of the parties. The management was asked to adduce their evidence first.

Shri Khushi Ram was examined as the sole management witness who deposed that he held the enquiry in the case of Shri Kishan Chand. He had given opportunity to the workman to cross examine the witnesses of their management and also for leading his defence. Shri Gian Chand was assisted the workman in the domestic enquiry. He produced the copies of enquiry proceedings which are Ex. M-1. He also produced the copies of the finding which is marked Ex. M-2. In his cross examination he has admitted that he has not seen the standing orders and he could not say whether Shri Khoob Ram was a spot witness. He did not summon Shri Khoob Ram on his own

record as the workman did not wish to produce him. He admitted that he was the Chief Security Officer and he also gave out that he had held several enquiries in the factory as well as in the police department. The authorised representative of the management tendered in evidence documents which are Ex. M-3 to Ex. M-8.

Shri Kishan Chand appeared as his own witness who deposed that he was suspended on 24th January, 1976 and charge-sheeted on 29th January, 1976 to which he replied on 30th January, 1976. The management appointed Shri Khushi Ram, Security Officer as the enquiry officer who did not hold the enquiry properly in accordance with natural justice. He produced Khoob Ram, who was eye witness of the occurrence but the enquiry officer did not record his statement. The enquiry officer also did not allow him to re-examine his witnesses nor he allowed to cross examine the witnesses by his representative Shri Gian Chand. The enquiry officer did not give sufficient time to defend his case. In his cross examination he has admitted that Gian Chand was present in the proceedings but the enquiry officer did not allow him to speak. He further stated that Shri Gian Chand did not put any question to the witnesses. He admitted as correct that his and Gian Chand's signatures were obtained in each day's proceedings. Shri Khoob Ram an employee of the mills was prevented to appear before the enquiry officer but opportunity was given to him. Shri Gian Chand did not make any statement in his presence for giving up Khoob Ram. He did not complaint against the enquiry officer. At present he was around 55 years.

On his notice of demand which was also to be treated as his statement of claim the workman has stated that the enquiry proceedings were vitiated on several ground. Firstly that no eye witness was examined as witness in the enquiry proceedings. Secondly the producing register was not produced despite request to produce the same. Thirdly the management witnesses have supported his contention that he had not disobeyed

any order. The finding of the enquiry officer were not based on actual facts and the dismissal order passed was not justified as the same was based on improper enquiry and no past record of service for a period of 16 years was considered while punishing the workman which was mandatory under the certified standing orders.

On the other hand the management in their written statement has alleged that the workman was dismissed after a regular enquiry during which the workman was afforded sufficient opportunity to cross examination or leading his defence. After receipt of the enquiry report show cause notice was issued and after considering his reply thereto his services were dismissed. The dismissal order was justified and in order and in accordance with law.

I heard the learned representative of both the sides who also file written arguments and after going through the evidence on record I decide the issue as under:—

From the enquiry proceedings Ex. M-1 it is evident that the workman fully participated in the proceedings along with the representative Shri Gian Chand who put his signature on each day's proceedings. The workman cross examined the management witnesses and he was also given the full opportunity to lead his defence. From the proceedings, dated 21st June, 1976, it is clear that the case of the workman was closed on the statement of his representative Shri Gian Chand. From the enquiry report it is also clear that the enquiry officer has considered the evidence produced before him on both sides and based his findings on the same and found the charges proved against the workman. The shortcomings in the enquiry proceedings as were brought out by the workman in his demand notice are proved otherwise than alleged by him. The drawbacks pointed out by him that no eye witness was examined during the course of enquiry was bailed as he himself wanted to produce Shri Khoob Ram in his defence whom he claimed to be an eye witness but who was given up by him and his

authorised representative Shri Gian Chand closed the case of the workman without getting his statement recorded after obtaining two three adjournments for the same. Even otherwise it is also doubtful from the statement of the workman recorded in the course of enquiry if there was any eye witness to the occurrence as he has in his cross examination given out that there was none present where Shri Ram Singh, centrifugal mate happened to talk him for doing the work under dispute. The statement given by the workman before my learned predecessor is quite different and contrary to what he was given before the enquiry officer during the course of enquiry which appears to have been made only to bring out the discrepancies in the enquiry proceedings in order to prove it as vitiated. In his demand notice he has stated that the production register for the disputed period was not produced by the management in spite of his requests has not been mentioned in his statement recorded before my learned predecessor nor there is anything recorded in this behalf in the enquiry file nor in his statement before the enquiry officer, this thing was brought to his notice. So all the allegations levelled by the workman against the enquiry being faulty are not proved in his favour nor he lead any evidence to that effect.

The workman representative has argued that the management order of dismissal was passed without considering the past record of service for 16 years which was mandatory as per the clause M, sub-clause 5 of the certified standing order which reads as under:—

"In awarding punishment under this Standing Order, the General Manager or any other person authorised by him in writing in this behalf shall take into account the gravity of the misconduct and the previous record, if any, of the workman and any other extenuating or aggravating circumstances that may exist.

But this is of no avail to the workman as the same has to be considered only in cases when a more severe punishment

was to be awarded but in the present case when the workman was to be awarded the extreme punishment of dismissal then there was no need of considering the past record. As the charges on which the workman was dismissed constituted grave misconduct under clause M sub-clause 1(a) and which were proved on the basis of the findings of the enquiry officer and the enquiry being conducted proper that and in accordance with the principles of natural justice. The dismissal order is therefore justified and in order and the workman is not entitled to any relief. The reference is answered and returned in the above terms.
Dated 23rd January, 1981.

BANWARI LAL DALAL,
Presiding Officer,

Labour Court, Haryana, Rohtak.

Endorsement No. 228, dated 2nd February, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

The 17th March, 1981

No. 9(1)81-8Lab./2584.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s Notified Area Committee, Safidon,

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR COURT
HARYANA ROHTAK.

Reference No. 237 of 1978
between

SHRI RAM DULARE, WORKMAN AND
THE MANAGEMENT OF M/S NOTI-
FIED AREA COMMITTEE, SAFIDON

Present:—

Shri Khushi Ram, for the workman.
Shri Surinder Kausal, for the manage-
ment.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/27-78/38456, dated 22nd August, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Ram Dulare, workman and the management M/s N.A.C., Safidon. The term of the reference was:—

Whether the termination of services of Shri Ram Dulare was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties put in their appearance in response to the same on 25th September, 1978, filed their respective pleadings and issues were framed on the basis of the same on 3rd May, 1979 as under:—

(1) Whether the reference is not competent as there is no proper espousal in this case.

(2) As per reference?

The management was asked to adduce their evidence first. The management examined Shri Mohinder Singh, Clerk as their sole witness and closed their evidence on 25th June, 1979. The workman himself appeared as his own witness and closed his case on 27th August, 1979. I heard the learned representative of both the parties and decide the issues as under:—

ISSUE NO. 1 AND 2:

The workman has submitted in his demand notice that his services were terminated with effect from 23rd December, 1977, on account of no provision in the budget and being a temporary probational. The management did not serve him with any notice or paid one month pay in lieu of prior notice. The workman has further retreated his claim in his statement of claim and stated that he was not paid the retrenchment compensation and which was required to be paid under section 25-F of the Industrial Disputes Act. The workman has also submitted that he was employed on regular basis on 20th August, 1975 and the respondent suddenly terminated his services without any reason or prior notice.

The management in their written statement admitted that the workman joined duty from 20th August, 1975 but he did not work regularly till 23rd December, 1977, as alleged. The services of the applicant were terminated on 1st February, 1977 and the applicant did not challenge this termination. The workman was again re-employed on 16th March, 1977 on verbal order of the President which were confirmed,—*vide* resolution No. 180, dated 29th March, 1977 and office,—*vide* No. 58, dated 30th March, 1977. The management further submitted that his previous services is of no significance and as the workman did not put in one year or more of service as such the provision section 25-F are not attached and there was no question of any violation of section 25-F. The management witness MW-1 Shri Mohinder Parkash, clerk has deposed that the workman was taken in employment with effect from 16th March, 1977 as per Ex. M-1. His joining report was Ex. M-2. The termination order was Ex. M-3 and the services of the workman were terminated because he was appointed on temporary basis. He again stated that the termination was effected for on economy basis. In his cross-examination the witness has given out that he joined in '75 on 20th August, 1975 on daily wages or otherwise. There was no mention in the office order of '75 as to whether he was temporary or permanent. His medical examination was done in 1975. He was then terminated on 1st February, 1977.—*vide* termination letter Ex. W-2 and then he was re-employed.—*vide* Ex. W-1. No notice was issued to him. No period was specified in Ex. M-1 however there was an entry of the handwriting of Shri Chain Singh, president that appointment was being made for 12 months only with effect from 16th March, 1977. He denied the suggestion that the services of the workman terminated with mala fide intention.

From the oral evidence produced by the parties and the documentary placed on the file it is an admitted fact that the workman was initially employed on 20th

March, 1975 on regular basis,—*vide* Ex. W-1 and he worked continuously upto 1st February, 1977, when his services were terminated,—*vide* Ex. W-3. The workman was again employed on 16th March, 1977 and worked up to 23rd December, 1977. It is also an admitted fact that the workman was not given any notice or any notice pay in lieu thereof nor he was paid any retrenchment compensation. The management has argued that as the workman has not completed one year of continuous service and as such he was not entitled to retrenchment compensation and his service prior to 1st February, 1977 cannot be considered as the workman did not raise any demand in respect of that order of termination. Even if the fact of re-employment is taken to be true and the length of service counted from this date of appointment i.e. 16th March, 1977 to the date of termination which is 23rd December, 1977 the workman has completed a period of 240 days of continuous service in one calendar year and this is a well established rule of law that when a workman has put into 240 days of continuous service in one calendar year his services will not be terminated without giving any notice or without paying any notice pay in lieu thereof or the retrenchment compensation. I don't agree with the contention of the management that no notice or notice pay was required. The management has not even also paid. The retrenchment compensation which was a pre-condition under section 25-F of the Industrial Disputes Act, and the action of the management also smells of mala fide intention. From the remark of the President on the letter of appointment Ex. M-1, which purports to change the service condition of the workman from those for which he was appointed on 20th March, 1975. Though he was re-employed but in his appointment letter his past service was the basis of his re-employment. On the basis of the discussion made above the action of the management in terminating the services of the workman is not justified and also not in order and the same is set aside. The workman is entitled to reinstatement with continuity

of service and with full back wages. The reference is answered and returned in the above terms.

Dated 28th February, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 589, dated 6th March, 1981.

Forwarded (four copies) to the Secretary, to Government of Haryana Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 9(1)81-8Lab/2587.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s. The Panipat Co-operative Sugar Mills, Panipat.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT
HARYANA, ROHTAK

References Nos. 133 to 143 of 1978

and 173 to 179 of 1978.

between

THE WORKMEN AND THE MANAGEMENT OF M/S THE PANIPAT CO-OP. SUGAR MILLS LTD., PANIPAT.

Present:

Shri Gian Chand and Shri Madhu Sudan, for the workmen.

Shri Ranbir Singh Malik, for the management.

AWARD

These references have been referred to this court by the Hon'ble Governor,—vide his orders No. KNL/

4-78/31905, dated the 12th July, 1978, 31899, 31893, 31887, 31881, 31869, 31863, 31857, 31851, 31845, 31875 all of dated 12th July, 1978 and KNL/4-78/34245, 34251, 34257, KNL/2-78/34263, KNL/2-78/34270, KNL/2-78/34296, KNL/2-78/34276 all of 20th July, 1978 under section (i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between the workmen and the management of M/s. The Panipat Co-op. Sugar Mills, Panipat. The terms of the references was:—

Whether the termination of services of the workmen were justified and in order? If not, to what relief are they entitled?

On the receipt of the order of references notices as usual were sent to the parties. The parties put in their appearance in response to the same and filed their respective pleadings. On the basis of which the following issue was framed:—

Whether the termination of services of the workmen was justified and in order? If not, to what relief are they entitled?

As the same issues on law and facts were involved in all the references numbering 133 to 143 of 1978 and 173 to 179 of 1978 which were consolidated by my learned predecessor on 21st May, 1979 and it was further ordered that evidence and further proceedings was to be recorded in reference No. 133 of 78 which was to be read in all other references mentioned above. By this order I dispose of all these references.

The management examined Shri Jagdish Lal Verma, Time Keeper as MW-1 and closed their case. All the workmen were examined as their own witnesses except Miss Ashok Rani a workman in reference No. 138 of 1978 who did not come to depose. Arguments were heard and I give my findings issuewise as under:—

ISSUE NO. 1:

The management relied on Exhibit M-1 the true copy of the resolution of the

Board of Directors dated 18th August, 1977, Exhibit M-2 copy of proceedings of the Board of Director dated 15th October, 1977, Exhibit M-3 seniority list of the concerned employees, Exhibit M-4 statement of retrenchment compensation paid each of the employees. All the workmen have challenged their termination order on the ground that the reasons given for their termination i.e. for effecting economy were not genuine as other persons on daily wages were engaged to do their job. The management abolished the posts only to punish and victimise the workmen. Some of the workmen has stated that no notice under section 9(A) was given by the management.

The management has contended that they have complied with the conditions as laid down under section 25(F) of the Industrial Disputes Act while retrenching the workmen. Section 25(F) reads as under:—

No workman employed in an industry who has been continuous in service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of services;

- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed years of continuous service) or

any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette).

But there is no evidence on the record which proves that any notice in the prescribed manner was served on the appropriate Government as is required under clause 'C' of section 25(F) though it is not condition precedent to retrenchment still it is one of the mandatory provisions to be complied with to give validity to retrenchment. This section creates a bar to retrenchment without payment of notice pay, the retrenchment compensation and service of the notice to the appropriate Government. As is clear from the notice of termination that the retrenchment is being done with a view to effect economy in the establishment expenses and the termination was to be given immediate effect. The workman representative has drawn my attention to the provision contained in section 9(A) which reads as under:—

No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,—

- (a) Without giving to the workman likely to be affected by such change a notice in the prescribed manner of nature of the change proposed to effected; or
(b) within twenty-one days of giving such notice:

Section 9(A) is to be read with conditions of service for change of which notice is to be given which are contained in the Fourth

Schedule of the Industrial Disputes Act condition No. 10 of this schedule roads and includes rationalisation, standardisation etc. likely to lead to retrenchment.

Rationalisation, means to organise an industry for effecting greater economy and efficiency.

It is therefore obvious that the retrenchment was made in order to effect rationalisation of the Industry and as such the notice under section 9(A) was mandatory and there is no evidence on the record to prove that any notice to the workman was given for effecting such change i.e. retrenchment and from the notices of termination it is also evident that the change was effected immediately without allowing the time of 21 days from the date of notice to the date of effecting such change.

Though it is admitted and also proved fact that all the workmen who were so retrenched were the junior most in the categories and they had been paid their retrenchment compensation according to law and which was accepted by the workman without any protest and as such there was no mala fide intention on the part of the management in terminating their services but the management has failed to comply with all the conditions contained in section 25(F) and also the condition contained in section 9(A) and having a lenient view on the lapse of the management in observing all the conditions precedent and having regard to the bona fide intention of the management I reinstate the workmen with continuity of service but with 50 per cent back wages while setting aside the termination order which is illegal and not in order. As Miss Ashok Rani did not pursue the demand raised by her leading to the reference No. 138 of 78. In her case I answer that the order of termination is justified and proper and the workman is not entitled to any relief. I further

order that a copy of this award be placed in each of the reference file.

The 28th February, 1981

BANWARI LAL DALAL,

Presiding Officer,
Labour Court,
Haryana, Rohtak.

Endorsement No. 586, dated the 6th March, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court,
Haryana, Rohtak.

No. 9(1)81-8Lab/2585.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the Chairman Haryana State Agricultural Marketing Board, Chandigarh. (ii) Administrator Market Committee, Bhiwani.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
ROHTAK

Reference No. 331 of 78

between

SHRI CHHOTU RAM, WORKMAN
AND THE MANAGEMENT OF M/S. (i)
CHAIRMAN, HARYANA STATE AGRICULTURAL
MARKETING BOARD
CHANDIGARH (ii) ADMINISTRATOR,
MARKET COMMITTEE, BHIWANI.

Present :—

Shri Sagar Ram Gupta, for the workman.

Shri Om Parkash Lahoriwala for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HSR/40-78/55034, dated 8th December, 1978 under Section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between the workman Shri Chhottu Ram and the management of M/s. Market Committee, Bhiwani. The term of the reference was:—

Whether the termination of services of Shri Chhottu Ram was justified and in order? If not to what relief is he entitled?

On receipt of the order of reference notices as usual were sent to the parties who put in their appearance in response to the same and filed their respective pleadings on the basis of which following issues were framed:—

1. Whether the applicant does not fall within the definition of the workman as defined in section 2(s) of the Industrial Disputes Act?
2. Whether the provisions of the Industrial Disputes Act are not applicable to the respondent?
3. Whether this court has no jurisdiction to entertain the present reference?
4. Whether the applicant is estopped from presuming the claim as per reference?

The management examined Shri Pirthi Pal Singh, secretary respondent as their sole witness and closed their case. The workman did not propose to lead any evidence and closed his case. I heard the learned representative of both the parties and give my finding as under:—
ISSUE NO. 1 TO 4:

The management did not lead any evidence on the issues nor they pressed these issues during the course of arguments and only relied on the documents as Exhibit MW-1/1 to Exhibit MW-1/3. From these documents it is quite obvious that the workman put in more than one year of continuous service. He was appointed on 12th July, 1976 and was terminated on 19th October 1977,—*vide* order Exhibit MW-1/3 and from the order of termination it is also clear that the workman has not been given

CS (H)—Govt. Press, Chd.

any notice or notice pay nor any retrenchment compensation was paid at the time of termination and as such violated the provision of section 25(f) of the Industrial Disputes Act. It is a well settled rule of law that when a workman is to be retrenched who has put in one year or more of continuous service the employer will have to comply with the conditions laid down in section 25(F) of the Industrial Disputes Act and if these conditions are not complied with the order of termination will be rendered *void ab initio* and workman will be entitled to reinstatement with full back wages. The evidence of the management is sufficient to prove the case of the workman because in his cross examination the management witness had admitted that neither any notice or any notice pay nor the retrenchment compensation was paid to the workman at the time of his termination. It is also admitted fact that the workman was reinstated with effect from 16th April, 1980.

I, therefore, in view of my findings above decide all the issues against the management and in favour of the workman and set aside the order of termination which is *void ab initio* and not operative at all entitling the workman for reinstatement and for full back wages. As the workman has already been reinstated on 16th April, 1980 I further hold that the workman is entitled to the relief of back wages for the period 19th October, 1977 the date of his termination to 15th April, 1980 the period for which the workman remained out of employment. Reference is awarded and returned in the above terms.

The 28th February, 1981

BANWARI LAL DALAL,
Presiding Officer,

Labour Court, Haryana, Rohtak.
Endorsement No. 588, dated the 6th March, 1981.

Forwarded (four copies) to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under Section 17 of the Industrial Disputes Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.